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individual as to the matter or transaction under consideration;

(B) Refrain from participating in the board's discussion of the matter or transaction; and

(C) Recuse themselves from voting on the matter or transaction (if the individual is a director). *See* Form AC, which provides further information on operating plans and conflict of interest plans. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site at <http://www.federalreserve.gov>.

(2) Before the board of directors may adopt a plan of conversion that includes a charitable organization, the mutual holding company must identify the directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

(3) The stock certificates of shares contributed to the charitable organization or that the charitable organization otherwise acquires must bear the following legend: "The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization."

(4) As long as the charitable organization controls shares, the resulting stock holding company must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the shareholders.

(5) After the stock offering is complete, the resulting stock holding company must submit an executed copy of the following documents to the appropriate Reserve Bank: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after the stock offering), conflict of interest policy, and the gift instrument for the contributions of either stock or cash to the charitable organization.

§ 239.65 Voluntary supervisory conversions.

(a) *Voluntary supervisory conversion.* (1) The mutual holding company must comply with this section and § 239.66 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 10(o)(7) and 10(p) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) and (p)).

(2) Sections 239.50 through 239.64 also apply to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

(b) *Conducting a voluntary supervisory conversion.* In conducting a voluntary supervisory conversion, the mutual holding company may:

- (1) Sell its shares to the public;
- (2) Convert into stock form by merging into a state-chartered corporation; or
- (3) Sell its shares directly to an acquiror, who may be an individual, company, depository institution, or depository institution holding company.

(c) *Member rights in a voluntary supervisory conversion.* Members of the mutual holding company do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the Board provides otherwise. The members may have interests in a liquidation account, if one is established.

(d) *Eligibility for a voluntary supervisory conversion.* A mutual holding company may be eligible to engage in a voluntary supervisory conversion if:

(1) Either the mutual holding company or its subsidiary savings association is significantly undercapitalized under applicable regulatory capital requirements (or the mutual holding company or its subsidiary savings association is undercapitalized under applicable regulatory capital requirements and a standard conversion that would make it adequately capitalized is not feasible) and will be a viable entity following the conversion;

(2) Severe financial conditions threaten stability of the mutual holding company, and a conversion is likely to improve its financial condition.

(e) A mutual holding company or its subsidiary savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) It will be adequately capitalized as a result of the conversion;

(2) It, the proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the best interest of the mutual holding company and its subsidiary savings associations, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the mutual holding company and its subsidiary savings associations, the Deposit Insurance Fund, or the public interest.

(f) *Plan of voluntary supervisory conversion.* A majority of the board of directors of the mutual holding company must approve a plan of voluntary supervisory conversion. The mutual holding company must include all of the following information in the plan of voluntary supervisory conversion.

(1) The name and address of the mutual holding company.

(2) The name, address, date and place of birth, and social security number or tax identification number, as applicable, of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the mutual holding company.

(3) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that the mutual holding company will issue.

(4) The number and percentage of shares that each investor will purchase.

(5) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(6) A description of any liquidation account.

(7) Certified copies of all resolutions of the board of directors relating to the conversion.

(g) *Voluntary supervisory conversion application.* The mutual holding company must include all of the following information and documents in a voluntary supervisory conversion application to the Board under this subpart:

(1) *Eligibility.* (i) Evidence establishing that the mutual holding company meets the eligibility requirements under paragraph (d) of this section.

(ii) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(2) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with paragraph (e) of this section.

(3) *Business plan.* A business plan that complies with § 239.53(b), when required by the Board.

(4) *Financial data.* (i) The most recent audited financial statements and Thrift Financial Report. The mutual holding company must explain how its current capital levels or the capital levels of its subsidiary savings associations make it eligible to engage in a voluntary supervisory conversion under paragraph (d) of this section.

(ii) A description of the estimated conversion expenses.

(iii) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the Board and the non-cash asset must meet all other Board policy guidelines.

(iv) Pro forma financial statements that reflect the effects of the transaction. The mutual holding company must identify the tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The mutual holding company must prepare the pro forma statements in conformance with Board regulations and policy.

(5) *Proposed documents.* (i) The proposed charter and bylaws.

(ii) The proposed stock certificate form.

(6) *Agreements.* (i) A copy of any agreements between the mutual holding company and proposed purchasers.

(ii) A copy and description of all existing and proposed employment contracts. The mutual holding company must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and

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the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(7) *Related applications.* (i) All filings required under the securities offering rules of subpart E of this part.

(ii) Any required Holding Company Act application or Control Act notice under part 238 of this chapter.

(iii) A subordinated debt application, if applicable.

(iv) Applications for permission to organize a stock savings and loan holding company and for approval of a merger.

(v) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the Board, copies of the applications and related documents.

(8) *Waiver request.* A description of any of the features of the application that do not conform to the requirements of this subpart, including any request for waiver of any of these requirements.

(h) *Offers and sales of stock.* If the mutual holding company converts under this subpart, the conversion shares must be offered and sold in compliance with § 239.59.

(i) *Post-conversion acquisition of shares.* For three years after the completion of a voluntary supervisory conversion, neither the resulting stock holding company nor the principal shareholder(s) may acquire shares from minority shareholders without the Board's prior approval.

§ 239.66 Board review of the voluntary supervisory conversion application.

(a) *Board review of a voluntary supervisory conversion application.* The Board will generally approve the application to engage in a voluntary supervisory conversion unless it determines:

(1) The mutual holding company does not meet the eligibility requirements for a voluntary supervisory conversion under §§ 239.65(d) or because the proceeds from the sale of the conversion stock, less the expenses of the conver-

sion, would be insufficient to satisfy any applicable viability requirement;

(2) The transaction is detrimental to or would cause potential injury to the mutual holding company, its subsidiary savings association, or the Deposit Insurance Fund or is contrary to the public interest;

(3) The mutual holding company or the acquiror, or the controlling parties or directors and officers of the mutual holding company or the acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(4) The mutual holding company fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the Board generally will not approve employment contracts of more than one year for the existing management.

(b) *Conditions the Board may impose on an approval.* (1) The Board will condition approval of a voluntary supervisory conversion application on all of the following.

(i) The conversion stock sale must be complete within three months after the Board approves the application. The Board may grant an extension for good cause.

(ii) The mutual holding company and the resulting stock holding company must comply with all filing requirements of subpart E of this part.

(iii) The mutual holding company must submit an opinion of independent legal counsel indicating that the sale of the shares complies with all applicable state securities law requirements.

(iv) The mutual holding company and the resulting stock holding company must comply with all applicable laws, rules, and regulations.

(v) The mutual holding company and the resulting stock holding company must satisfy any other requirements or conditions the Board may impose.

(2) The Board may condition approval of a voluntary supervisory conversion application on either of the following:

(i) The mutual holding company and the resulting stock holding company must satisfy any conditions and restrictions the Board imposes to prevent